



**REC**

Recruitment  
& Employment  
Confederation

May 2020

# Coronavirus Jobs Retention Scheme

Information for  
temporary workers

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## Information for temporary workers

This document has been produced by the REC for members to share with temporary workers who are being furloughed under the Coronavirus Jobs Retention Scheme (the Scheme).

The advice given here is correct at the date of publication.



## What is the Coronavirus Jobs Retention Scheme?

The government introduced this temporary Scheme to allow all UK employers to access support to continue paying part of their employees' wages and avoid redundancies where their operations have been severely affected by coronavirus. The Scheme started on 1 March and was initially intended to run for 3 months, however it has been extended twice and will now run to the end of October.

If you are being furloughed then your agency can claim for 80% \* of your usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on your wage.

\* This will reduce from August but we do not have the detail at the moment.



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## As a temporary worker will I benefit under the Scheme?

The Scheme rules and government guidance use the words 'employee' and 'employer' as catch all terms. This does not mean that you are an employee for employment rights purposes and your employment status will be determined by your contract.

Agencies want to support their temporary workers at this time however they must comply with the rules of the Scheme and not all temporary workers will be eligible to benefit under the Scheme.

- » Workers on any type of contract, including a zero-hour or temporary contract can be furloughed provided that the conditions for furloughing are met. However, you do not have an automatic right to be furloughed and your agency must agree to furlough you.
- » If you work through an umbrella company, then the umbrella company is your 'employer' for the purposes of the Scheme it will be up to the umbrella company to decide whether or not to furlough you.
- » If you are a limited company contractor working in the public sector then you may be eligible to be furloughed. Other contractors working through their own PSC cannot be furloughed by agencies as they will not be on the agency's payroll. It may be possible for the PSC to furlough the contractor and use the Scheme to cover 80% of the contractor's pay if the contractor is on the PSC's payroll.

There is also a separate government Scheme to support self-employed workers:

<https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>



## What are the conditions around furloughing?

You will be eligible to be furloughed if your agency agrees to furlough you and:

- » You were on your agency's payroll on or before 19 March 2020;
- » Your agency has instructed you to stop all work in relation to your employment;
- » The period for which you have not or will not work is more than 21 days; and
- » Your agency's instruction is given by reason of circumstances arising from coronavirus.

The reason your work has finished has to be because of coronavirus. **If your work has finished, but that was not related in any way to coronavirus the agency cannot furlough you.** If you are being furloughed you must agree with your agency and your agency must confirm to you in writing that you are being furloughed. This can be done by email.



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**You were on your agency's payroll on or before 19 March 2020**



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**The period for which you have not or will not work is more than 21 days**



**Your agency's instruction is given by reason of circumstances arising from Coronavirus**



## What does furlough pay include?

If the agency's claim for your furlough pay is successful they will receive the lower of 80% \* of your regular wage or £2,500 per month. The agency must deduct tax, national insurance, their pension contributions and possibly other deductions such as student loans, where relevant.

The government has yet to confirm whether certain deductions can be made from the furlough grant such as attachment of earnings or child maintenance orders. If you have a student loan and are concerned about it see the Student Loan Company guidance:

<https://www.gov.uk/guidance/guidance-for-repayment-customers>

When calculating your regular wage, your agency can include the following: regular wages, non-discretionary overtime, fees and commission payments and piece rate payments.

The furlough grant does not cover:

- » payments made at your agency's discretion including tips, discretionary bonuses or discretionary commission payments;
- » non-cash payments and non-monetary benefits



## Does my agency have to top up the furlough pay?

Agencies are not obliged to top up the grant but can do so if they wish. If they do, HMRC will not cover the cost of the top up and your agency will have to cover this cost. However agencies are not being paid by clients whilst temporary workers are furloughed so most agencies will not be able to top up furlough pay to 100%.

\* This will reduce from August but we are waiting for more detail from government.



## Can I be furloughed if I am on sick leave?

The furlough scheme is not intended to cover short term sickness. If you are sick or self-isolating as a result of coronavirus you may be able to claim statutory sick pay, provided you meet the relevant criteria. However, if your agency wants to furlough you for business reasons, and you are off sick at the time, then your agency can furlough you (following the correct process) but you must not receive sick pay for any of the furlough leave period.

If you become sick while on furlough, it is up to your agency whether to move you onto sick pay or keep you on furlough. You are not entitled to receive both furlough pay and sick pay at the same time.







## Am I entitled to holiday pay and leave while I am being furloughed?

If you have already accrued holidays and you take them while you are on furlough leave then you should be paid this at 100% of your normal rate of pay.

Your entitlement to accrue holiday whilst on furlough depends on your employment status. On 13 May government released new guidance on holiday entitlement during furlough.\*

- » If you are an employee you will continue to accrue holidays as per your employment contract when you are on furlough.
- » If you are a temporary worker - we have copied some text from the government's guidance:

### Furloughed agency workers

The CJRS\*\* does not alter the position as to whether or not agency workers, including those working through an umbrella company, are entitled to accrue holiday under the Working Time Regulations and / or under their contract.

### Accrual of holiday during furlough

Where holiday rights exist under the regulations, they remain unchanged when workers are on furlough. Where agency workers are engaged under a contract of employment which sets out their entitlement to holiday, that is 5.6 weeks or more in accordance with the regulations, their contract will continue to operate as before and they will continue to accrue holiday on furlough as they would normally when between or otherwise not working on assignments.

Some agency workers on a contract for services may not be entitled to the accrual of holiday or to take holiday under the Working Time Regulations while on furlough because they are not workers or treated as workers under those regulations when between assignments or otherwise not working on assignments. Contracts may nevertheless include holiday provisions which will continue to operate in the same way as they did prior to the furlough period.

\*You can see the full holiday pay guidance here: <https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19>

\*\*You can see the the Coronavirus Job Retention Scheme here: <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>



If you have already accrued holidays and you take them while you are on furlough leave then you should be paid this at

**100%**

of your normal rate of pay





## I am a teacher – can I receive furlough pay for school holiday?

The REC has been told by the Crown Commercial Services that yes, supply teachers can be furloughed paid for periods covering school holidays. However, the rules of the Scheme say that the employer (in this case the agency) cannot claim furlough grant for periods when the employee (temp) would be on a period of unpaid leave. The REC is waiting for written clarification from government on this and will advise agencies accordingly.





## How will my agency calculate my monthly wage?

As a temporary worker whose pay varies:

If you've been engaged for a full year, your agency will claim for the higher of either:

- » The amount you earned in the same month last year
- » Average of your monthly earnings from the last year

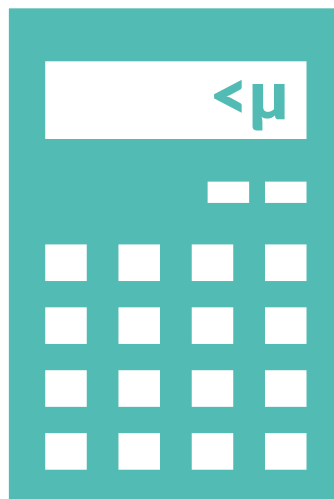
If you've been engaged for less than a year your agency will claim for an average of your regular monthly wages since you started work.



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## How long can I be furloughed for?

The minimum furlough period is 21 days and you can be furloughed for as long as the Scheme continues. If work becomes available while you are on furlough then your agency can take you off furlough (once the minimum 21 days have been completed) and you can return to work and your agency will then stop claiming the grant for you.

If after you have returned to work the work then stops you can be furloughed again by your agency.

On 12 May the government announced that it will make the Scheme more flexible by allowing furloughed workers to work part-time. However, the government hasn't given any detail at this stage, so we don't know if or how that may affect the 21 day requirement - we will advise agencies when we know more. We also don't know how this will affect temporary workers who would have different working patterns anyway.



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## Can I work elsewhere while I am being furloughed?

You cannot work either for the agency that has furloughed you, or for any organisation linked or associated with that agency. However, you can work for another agency whilst on furlough if:

- » your contract allows you to do so, or
- » you work for more than one agency, in which case each job should be treated separately for furlough purposes.

This means that you may work elsewhere, including for your agency's clients but either directly or through another agency. Importantly your agency cannot stop you from working elsewhere - to do so would be in breach of Regulation 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.



## Where can I get more information on my rights under the Scheme?

The government has published guidance for employees on the Scheme:  
<https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

ACAS have further guidance and advice for employees:  
<https://www.acas.org.uk/coronavirus>

For more general advice on your rights as a temporary worker see the REC and TUC factsheet for temporary workers:  
[https://www.rec.uk.com/\\_data/assets/pdf\\_file/0005/527558/Agency\\_Workers\\_Rights\\_2019\\_A4\\_Factsheet\\_AW\\_Digital\\_Final.pdf](https://www.rec.uk.com/_data/assets/pdf_file/0005/527558/Agency_Workers_Rights_2019_A4_Factsheet_AW_Digital_Final.pdf)





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